

¹ 5 U.S.C. § 8101 *et seq.*

injuries when a bus sideswiped her vehicle as she was securing her seatbelt while in the performance of duty. She first received medical care and stopped work on the date of the incident.

By development letter dated April 9, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim and instructed her as to the additional information necessary to establish her claim. It also provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received medical evidence documenting appellant's treatment from March 28 through May 8, 2018. However, no response to the development questionnaire was received.

By decision dated May 11, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish that the March 27, 2018 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On June 7, 2018 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. In support of her claim, she submitted additional medical evidence.

By letter dated October 11, 2018, OWCP's hearing representative notified her that in response to her request, OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for November 15, 2018 at 11:15 a.m. Eastern Standard Time (EST). The hearing notice was mailed to appellant's last known address² and she was provided with a toll-free number to call and the appropriate passcode. Appellant did not, however, call in for the hearing at the appointed time. She also did not contact OWCP's Branch of Hearings and Review within 10 days thereafter to explain her failure to appear.

By decision dated November 28, 2018, OWCP's Branch of Hearings and Review determined that appellant had abandoned her request for a telephonic hearing.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the hearing to the claimant and any

² By letter dated June 11, 2018, OWCP acknowledged appellant's change of address.

³ 20 C.F.R. § 10.616(a).

representative at least 30 days before the scheduled date.⁴ OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁵

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁶

ANALYSIS

The Board finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing before an OWCP hearing representative.⁷

Following OWCP's May 11, 2018 initial decision denying appellant's traumatic injury claim, she filed a timely request for a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. By letter dated October 11, 2018, a hearing representative notified appellant that, in response to her request, OWCP's Branch of Hearings and Review had scheduled a telephonic hearing for November 15, 2018 at 11:15 a.m., EST. OWCP properly mailed the hearing notice to appellant's last known address of record.⁸ Appellant failed to call in for the scheduled hearing using the provided telephone number. She did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing.⁹ The Board thus finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing.¹⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned her request for a telephonic hearing before an OWCP hearing representative.

⁴ *Id.* at § 10.617(b).

⁵ *W.H.*, Docket No. 18-0369 (issued November 29, 2018).

⁶ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (October 2011). *See also A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁷ *M.R.*, Docket No. 18-1643 (issued March 1, 2019).

⁸ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule. *See C.Y.*, Docket No. 18-0263 (issued September 14, 2018). Appellant did not submit evidence of nondelivery of OWCP's October 11, 2018 hearing notice such that the presumption of receipt would be rebutted.

⁹ *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

¹⁰ *A.J.*, *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board